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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/836,369	10/20/1997	VOLKER SCHMIDT	RSG 8379 US	6185

EXAMINER	
JAGAN, MIRELLYS	

ART UNIT	PAPER NUMBER
2855	

MAIL DATE	DELIVERY MODE
10/23/2007	PAPER

7590 10/23/2007
Law Office of Charles E. Krueger
P.O. Box 5607
Walnut Creek, CA 94596

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

08/836,369

Applicant(s)

SCHMIDT, VOLKER

Examiner

Mirellys Jagan

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,368,392 to Hollander et al [hereinafter Hollander] in view of the art disclosed by Teledyne Brown Engineering, "Diffraction-Optic Gratings", Photonics Spectra, September 1994, p.186 [hereinafter Teledyne].

Hollander discloses a device for temperature measurement comprising:

a radiometer having a detector and an optical system for imaging the heat radiation emanating from a measurement spot onto the detector, and

a sighting arrangement having a laser aligned to illuminate an optical element (30) moved by a motor to produce a light pattern that identifies and outlines the position and size of the measurement spot by means of visible light;

wherein the optical element generates a circular arrangement of more than two beams to outline and identify the energy zone.

Hollander does not disclose the optical element of the sighting arrangement being a diffractive optical system formed by a holographic element that generates the circular arrangement of more than two beams.

However, Teledyne discloses a holographic element (diffractive optical element) that splits a laser beam into a plurality of laser spots producing a circular pattern of more than two beams.

Referring to claim 1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sighting arrangement disclosed by Hollander by replacing the optical element and motor of the sighting arrangement with a holographic element, as taught by Teledyne, to form the circular light pattern in order to simplify the sighting arrangement by reducing the number of individual mechanical working parts.

Response to Arguments

3. Applicant's arguments that the examiner has not established a prima facie case of obviousness because the prior art (Hollander) fails to suggest the desirability of the claimed invention are not persuasive. Applicant relies on the following question posed by the Board as evidence showing that the examiner has failed to establish a prima facie case of obviousness:

"The question remains why would the artisan have chosen to use a diffractive optical system instead of or with the seven embodiments in Hollander without additional evidence to persuade the artisan to do so."

However, this question was posed in view of the rejection of claim 1 over Hollander alone. In the present rejections, the claims are rejected over Hollander in view of Teledyne,

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wherein Teledyne is the additional evidence that persuades the artisan to choose a diffractive optical system instead of or with the seven embodiments in Hollander. Accordingly, the Board's comments regarding the Hollander reference are not relevant in this case since the rejections are based on the combination of Hollander and Teledyne. Therefore, in this case, a prima facie case has been established, and the Examiner's conclusion of obviousness is deemed proper.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following reference discloses a diffractive optical element for marking a location:

U.S. Patent 5,418,608 to Caimi et al
U.S. Patent 4,914,460 to Caimi et al

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 11AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ
October 16, 2007



**GAIL VERBITSKY
PRIMARY EXAMINER**